

Appl. No. 09/857,235
Atty. Docket No. 8569
Amdt. dated _____
Reply to Office Action of 4/09/2003
Customer No. 27752

REMARKS

Rejection Under 35 USC 102 Over Rouquet et al.(EP 908175)

Claims 27-31 have been rejected under 35 USC §102(b) as being anticipated by Rouquet et al (EP '175). The Office Action states that Rouquet inherently teaches the enhanced delivery method claimed herein. Applicants respectfully traverse this rejection as it would apply to the claims as amended herein.

EP '175 relates to both oil-in-water and water-in-oil compositions comprising elastomeric organopolysiloxanes wherein according to the translation of the French language document provides high levels of spherical particles that do not result in unstable compositions characterized by high levels of organopolysiloxane particles that results in non-homogeneous appearing compositions that suffer from precipitation and flocculation of the silica-based particles after periods greater than 2 months at 45°C (see page 2, paragraph 2 and page 3, the definition of "stable composition"). The stability of such particles is important since these particles are relied upon to absorb oils while not drying on the skin, thereby maintaining cosmetic properties.

Notwithstanding the enhanced cosmetic stability advantages provided by the compositions disclosed by Rouquet, there is no teaching that such compositions also provide a significant skin care active delivery benefit. Rouquet requires the presence of organic spherical particles with a particle diameter less than 10 µm in diameter. The Rouquet compositions therefore are not those of the instant application. One of skill in the art would know that required components alter the functionality of compositions. Therefore, there is no evidence that the compositions of Rouquet et al. enhance the delivery of oil soluble skin care actives. Additionally, while several broad categories of skin care actives are disclosed for use with the compositions of Rouquet, there is no guidance provided which would lead one of skill in the art to choose oil-soluble actives as opposed to water-soluble actives. In addition, no distinction or advantage is taught in the context of a water-in-oil composition, as opposed to an oil in water composition, as is now a limitation of the pending claims.

Given the foregoing considerations, it is submitted that Applicants' claims as now amended are not anticipated by EP '175. Accordingly, rejection of these claims over, under 35 USC §102(b) is improper and should be withdrawn.

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Conclusion

In light of the above remarks, it is requested that the Examiner reconsider and withdraw the rejection under USC §102(b). Early and favorable action in the case is respectfully requested.

Respectfully submitted,
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